IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 174 of 2006

Date of Decision:06/02/2006

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UNITED INDIA INSURANCE CO.LTD. - Appellant(s)
Versus
DAMOR KACHARABHAI GHANABHAI - Defendant(s)

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Smt.Justice Abhilasha Kumari, Judge

Whether approved for reporting? Yes

For the appellant:

Mr.BC Dave,Advocate

For the respondents:

None for the respondents

(Per: THE HON'BLE SMT.JUSTICE ABHILASHA KUMARI (ORAL)

1. This First Appeal has been filed by the appellant - United India Insurance Co. Ltd. being

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Whether reporters of Local Papers may be allowed to see the judgment? Yes

aggrieved by the judgment and award dated 11.2.2005 passed by the Motor Accident Claims Tribunal (Aux.), Sabarkantha, whereby the claim of the claimants - respondents has been partly allowed and a compensation of Rs.3,05,000/- has been awarded with interest at the rate of 9% per annum from the date of application till 31.12.2000 and thereafter at the rate of 6% per annum has been awarded.

2. The facts of the case, which emerge from the record, are that on 6.6.1997 the deceased Somaji Thanaji was going from Vadali to Idar. The deceased stopped Jeep No. GRS 3596 being driven by Sabbirbhai Siddiqbhai Memon. The deceased then sat in the jeep to go to Vijaynagar Three roads. It is claimed in the claim petition that on reaching near the temple of "Sharneshwar Mahadev" the deceased was thrown out of the jeep which was being driven with excessive speed, in a rash and negligent manner and he died on the

spot, being crushed under the wheels of the said jeep. The FIR in this regard has been filed by the driver of the jeep, who alleges that the deceased bent down from the jeep and was flung out of the jeep due to this action. However, he does not deny that the deceased was crushed under the wheels of the jeep and died on the spot.

3. According to the claim set up in the claim petition,the deceased was a contractor,who used to take contract for digging wells and used to earn about Rs.4500/- to Rs.5000/- per month. He was aged 28 years and was unmarried. No documentary evidence of the exact income of the deceased was produced on record. However, there is oral evidence on record to the effect that the deceased was a contractor who used to take contracts for digging wells and used to earn about Rs.4500/- per month. To be on the cautious side, the Motor Accident Claims Tribunal has assessed the income of the deceased at Rs.2100/- per month and after deducting one-third as income

spent on himself and using a multiplier of 17, a compensation of Rs.2,85,00/- for loss of future income has been awarded. To this the M.A.C.Tribunal has added Rs.10,000/- toward loss to estate and Rs.5000/- each under the heads of last rites and for hiring of the vehicle to take the dead body to the native place in Rajasthan. In all Rs.3,05,000/- has been awarded to the legal heirs of the deceased.

4. We have heard learned counsel Mr.B.C.Dave for the appellant and gone through the material on record. It is the contention of the appellant that the accident had taken place due to the negligence of the deceased himself and not due to the negligence of the driver of the jeep and as such the driver of jeep should not have been held to be negligent. It is also the contention of the appellant that the income of the deceased has been calculated on the higher side and as a result the amount of compensation is also not

correctly awarded. Further it is contended that the multiplier of 17 ought not to have been applied by the M.A.C.Tribunal and instead multiplier between 10 to 14 should have have been applied.

5. It is not disputed that FIR regarding the accident and resultant death of Somaji was lodged by none other but the driver of the Jeep No.GRS 3596. The fact that the deceased was thrown out of the jeep and crushed under its wheels is not disputed. The M.A.C.Tribunal, after examining the entire material on record, has arrived at the conclusion that the jeep was being driven with excessive speed, in a rash and negligent manner, which led to the deceased being thrown out of it and being crushed under its wheels, resulting in his death. This is a finding of fact arrived at by the M.A.C.Tribunal, based on available material on record and it is not open to the appellant to assail it at the appellate stage.

Moreover, there is no material on record to prove that this is not the factual position and that the deceased himself had been negligent. Negligence has to be proved by the person alleging it and the appellant has not been able to prove in what way the deceased himself was negligent. This contention of the appellant therefore, cannot be accepted.

6. It has been proved on record that the deceased was an able bodied young man of 28 years and that he used to earn his living by taking contracts for digging wells. This is evident from the testimony of one Kurilal Punaji Asari at Exh.48, who was knowing the deceased and who has testified that the deceased used to take contract for digging wells. This witness has stated that in the year 1997 he was Sarpanch of village Asarivada and he knew the deceased. Prior to the death, the deceased had taken the contract of digging the well near Vadali and had told him that he used to earn Rs.4000/- to Rs.5000/- per

month from this work. The brother of the deceased has also testified to the same effect. However, since there is no documentary evidence on record as to the actual proof of income of the deceased, the M.A.C.Tribunal, to be on the safer side, has taken the income of the deceased at Rs.2100/- per month, in view of the evidence on record that the deceased used to take the contract for digging wells. The appellant has not brought any material on record to the contrary. Therefore, it can not be said that there is any infirmity in the view taken by the M.A.C.Tribunal regarding the income of the deceased.

7. It has to be kept in mind that the Motor Vehicles Act is a beneficial piece of legislation, the very object of which is to grant relief to the legal heirs of persons unfortunate enough to have died or sustained injuries, in a motor accident. As such, strict rules of evidence, such as proof beyond reasonable doubt

in criminal cases and preponderance of probabilities in civil cases, can not be made applicable to claims under this Act. Otherwise, the very purpose of its enactment would be nullified. It is sufficient that there should be evidence on record, on scrutiny of which the M.A.C.Tribunal arrives at a conclusion and gives a finding. If there is no evidence to the contrary and a finding has been given on the basis of evidence on record which can reasonably be arrived at by the M.A.C.Tribunal, then it cannot be contended at the appellate stage that the said finding should not have been arrived at. In the present case, on the material on record, there is no doubt that the M.A.C.Tribunal could reasonably have arrived at the finding it has recorded, and the High Court cannot substitute its own findings at the appellate stage.

8. The M.A.C.Tribunal has applied the multiplier of 17 in case of the deceased, who was

aged 28 years. The objection of the appellant that the multiplier ought to have been between 10 to 14 can not be accepted because even as per the Schedule attached to the Motor Vehicles Act, the multiplier can be taken at 18. Instead, in this case, the multiplier of 17 has been applied which, in our view, has been correctly done.

9. In view of the above discussion and in the facts and circumstances of the present case, we find no merit in the appeal and therefore, the same is summarily dismissed.

(Bhawani Singh)
Chief Justice

(Smt.Abhilasha Kumari)
Judge

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